

LAKE COUNTY BOARD of ADJUSTMENT
April 11, 2012
Lake County Courthouse Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Lavery, Mike Marchetti, Tim McGinnis, Paul Grinde

STAFF PRESENT: Joel Nelson, Karl Smithback, Lita Fonda

Mike Marchetti called the meeting to order at 4:00 pm.

Mike presented potential corrections offered to the minutes. On pg. 7 in the second line from the bottom, 'Did that could...' should read, "Did that count...." On pg. 11, a question was posed whether Joel referred to 'she' or 'Carstens Surveying'. Joel clarified that he was directing reference to Diana, not Carstens, so a correction was not needed.

Motion made by Paul Grinde, and seconded by Sue Lavery, to approve the March 14, 2012 meeting minutes as corrected. Four in favor (Sue Lavery, Mike Marchetti, Tim McGinnis, Paul Grinde) and one abstention (Clarence Brazil).

ROSE CONDITIONAL USE—FINLEY POINT

Mike noted that a very large document was received late. A copy was on the desk for each Board member. A copy of the BOA rules was also provided tonight. Per section 5.c.viii, the Board had the right to either accept the late submission or reject it, or reject parts, based on the reading and understanding of that document. Joel had additional copies of the BOA rules. Tim checked that these were a fresh copy of the current rules, as opposed to new rules. Joel gave the adoption date of October 13, 2010. He commented that there were actually 2 letters submitted after the staff report. The long one was from the applicants' attorney. There was also a follow-up email from one of the homeowners.

Joel Nelson presented the staff report. (See attachments to minutes in the April 2012 meeting file for staff report.) He synopsized the late public comment. (See attachments to minutes in the April 2012 meeting file for late public comment.) One addressed a private agreement. The other was from the applicants' attorney, who wanted to clarify a few issues. They wanted to allow further construction in compliance with both the as-built referred to in condition #1, upon which Joel recommended approval. They made reference to the May 3 plans submitted by Phil Korel and purportedly received by the County on May 3, 2011. Joel didn't think condition #1 disallowed them from accepting more detailed plans, which was what the request indicated. He did have a problem with permitting it under the revised plan because they didn't reflect the as-built.

Second, this discussed the 5/5/12 expiration of the permit pursuant to the staff recommendation. They requested an extension, and they didn't have a problem for it. That wasn't an issue for this Board. The applicants just needed to request an extension and there was a \$25 fee with the Planning Dept. It was in the staff recommendation, condition #17.

The 3rd thing they pointed out in the letter was the stormwater plan and updated elevation views, which were conditions #5 through 10. Staff recommended that they bring that additional information in. It was required according to policy. They didn't want the project to be delayed because they were concerned this review would take months. He thought history would show he would review these pretty promptly. If the information was inadequate he might have to ask for additional information. He didn't think this Board needed to get into that.

The fourth thing was the final as-built certifications that were recommended by condition #15. The letter referenced conditions #14 and #15. #14 required final inspection prior to occupancy. They didn't seem to want to do another set of as-built drawings. Staff recommended that this be a requirement due to the history of the project and the tight parameters of the property and the zoning.

Before the letter got into background facts, it said the Roses' request that the Board grant this conditional use permit, consistent with the affirmation to adjustments to the conditions recommended in the staff report. The Roses also requested that the Lake County Commissioners direct the Lake County Planning Director to lift the Cease and Desist order immediately on approval. He wasn't sure if they'd presented that request to the Commissioners. If that was an appeal, there was an appeal process. This Board didn't need to direct him to lift a Cease and Desist order. He wasn't sure what the Commissioners would do with that.

On the background facts, there were claims that the attorney was purporting. The background fact section seemed to make reference to a May 3 site plan that was found in the file. He couldn't go back and figure out how this appeared in the file. It was what it was, and they needed a conditional use for impervious surface coverage for this project. He didn't know how deeply the Board needed to get into that. It seemed to be a major premise of this letter. The letter detailed difficulties encountered during the remodel. It referred to a 4-inch setback which turned into a 4-foot setback violation when the roof overhangs were constructed. It was described as an inadvertent failure to comply with the building permit. It wasn't done intentionally. He couldn't speak to that. Regarding standards for the evaluation of a conditional use permit, the letter said generally that since they met the standards, they should be granted the conditional use permit. [The letter] discussed setbacks, temporary holding tank, county-imposed moratorium, Timbershor Board summer moratorium and a long history of that moratorium. Much of this wasn't germane to the Board approving a conditional use for an additional 3% impervious surface coverage, so he didn't attempt to read that aloud. He reiterated that the Board had the ability to reject information that the Board, staff and public haven't had the opportunity to review. They could certainly take parts of it, the stuff that they did have time to consider. He tried to synopsise the ideas of the letter, and gave his responses to them. He read the conclusion of the letter as another way to synopsise it.

Tim thought it seemed like a lot of stuff for one item. The only item in front of the Board was the conditional use for lot coverage more than 30%. The rest didn't have to do with what the Board was talking about. Joel said there were previous conditions imposed by the

Board, which had been revised slightly to get to where things are. Tim reiterated that the only issue the Board would decide upon was whether to grant a use permit for lot coverage more than 30%. Sue added this would be up to 33%. Tim agreed. Joel said that 's what was scheduled on the agenda, legally noticed and what the Board had power to deal with. Mike understood that the letter on the homeowner's moratorium was something the Board didn't have the right to look at. Joel said if it was tied to a standard for evaluation or intended to mitigate one of those standards, then he thought they could address it through a condition, but it would have to be tied to a standard. They couldn't simply enforce a private covenant. Mike saw that as a private agreement with the homeowner's board. He agreed with Tim that they were here to deal with a specific conditional use. They needed to try not to lose focus amid all of the detail that was being thrown at them.

Joel directed focus to the impervious surface coverage. Sue felt thate all of the last minute information was kind of overwhelming. They haven't been able to review this other than a brief synopsis. It didn't sound like it pertained to what they were doing. Mike said he got to the meeting early enough to thumb through the material in a bit more detail. He believed that it was out of place for the Board to look at this right now. It was too detailed. He thought Joel covered this particular issue very well in the details in the facts and findings of the conditions. Those also accounted for the things that were in the document that they had the right to actually vote on or approve. Joel said his review of the letter was an attempt to point out what he found as issues that might be pertinent to some extent. It was still his interpretation. He just got it yesterday and wasn't able to go through it with a fine-tooth comb.

Joel noted the letter would be part of the record regardless, but did the Board consider that they had adequate time to review the late letter in its entirety? Sue replied no. Joel asked if they would act on the conditional use today without consideration of that letter in its entirety. Tim didn't think he needed that document to make a decision on this conditional use. Sue agreed. Tim asked about checking with the applicant or agent. Mike said the decision about rejecting this could be made after the applicant/agent spoke. Joel suggested the agent/applicant could possibly synopsise better than he could.

Dennis Duty spoke on behalf of the applicant. He was brought in at the last minute, due to a death. As far at the letter, he spoke to the Roses this afternoon. There was some confusion on the public comment regarding the agreement with the homeowner's association moratorium. The majority of the letter was in response to that issue. His understanding was that the County did not enforce private covenants. The owners were comfortable that this wasn't relevant to today's conversation when he explained that. He didn't think there was an issue with the applicant about rejecting that letter as information on which the Board needed to make a decision today.

Dennis clarified on condition #5 to upgrade the stormwater management plan that the applicant had no issue with the condition, but wanted to be sure for the record that modifications were for the additional impervious surface. Joel agreed that the general concept of the original plan was fine. He needed to make sure as the size increased where the infrastructure could go that it was adjusted in a way that made sense.

Dennis referred to condition #10, regarding the 25-foot average height. His understanding was they were looking for a new elevation showing that the height did not exceed 25 feet. That could be an architectural rendering or elevation submitted and could be done fairly quickly in order to get the process rolling. Joel said he needed elevations showing the building height to demonstrate compliance with the 25-foot requirement and what had actually been built. Dennis checked that he meant up until now. He would get as-builts at the end, typically, when the whole building was completed. Those were required at the end when it was done, per recommended condition. Joel said he was more interested in what it was going to look like when it was done, so he knew it complied with the zoning.

Dennis said the main concern was to get this going again.

Andy Stark was also in attendance on behalf of the applicant and offered to answer questions. He noted there had been errors on his part and errors on the part of [inaudible] but nothing intentionally done to violate the rules. The building got moved a little bit to the north and they built off of a different wall than the architect had designed from. The building was 1 ½ feet out of square so they pushed the one corner into the setback. He should have caught that. That was where they were right now.

Public comment opened:

Bill McLaughlin: He lived on Finley Point on Snowberry Lane. They were invited to come today. He thought this was the 2nd variance requested and wondered about this. Their main concern as neighbors was that they used water out of the lake and wanted to make sure about water quality. They were downstream. He asked if a recommendation had already been made to approve a variance.

Joel N: He clarified that this was a conditional use. Staff recommended in light of the standards for evaluation, that the conditional use be conditionally approved, if the Board found the findings appropriate.

Bill M: He thought they'd already made up their minds.

Joel N: Staff made a recommendation on a conditional use. It was an important difference to note that this wasn't a variance. It didn't violate the zoning regulations. It was listed as a conditional use, which could be and were typically approved.

Bill M: He checked that to really give some input here, that he should have written a letter prior to the meeting.

Joel N: He explained that they welcomed public input at the meeting. It was a public hearing.

Bill M: There was one other thing. It said there was a 3% maximum increase in the requested impervious surface. It was actually 10% of the roof. It was 3% of 30% that already existed. What was under the additional 10%? Was that something that wasn't in the original planning? He wondered what that roof area covered.

Joel N: The calculations for impervious surface were kind of complicated. They calculate the amount of impervious surface coverage in the building envelope. There was also building in the setback that existed since the lodge was built. Bill was probably right. It was 3% of the total that was allowed that was being increased. That was an additional 10% of the impervious surface coverage of the [inaudible].

Bill M: They didn't want to infringe. He liked the look. They just wanted to make sure the water quality was protected, that the drainage, the septic and all those things were in place, and he would be satisfied.

Janelle Kuechle: She was Bill McLaughlin's partner. She checked that there were new plans submitted but not recorded that allowed for the extra building.

Joel N: He explained there was a site plan that was at the Planning Dept recently, in February, that had a date on it of May 3, 2011. It wasn't stamped 'Received' by the Planning Dept. He didn't know how that happened. Planning hadn't received it. It didn't come through. It wasn't asked to be part of the review. He couldn't recreate what specifically happened, as to how the Planning Dept received that. He noticed the department was not stamping every page of the file. It raised questions and was probably something that couldn't be solved.

Janelle K: She checked that this was an after-the-fact application, and that the building had already been done in excess of what was on the original conditional use permit. The extension of the building was already in place.

Joel N: He affirmed this was an after-the-fact review.

Janelle K: She said this happened earlier with the setback and the corner that had to be cut off after-the-fact. What was in this conditional use permit that allowed for making sure that the conditions under which this conditional use was allowed were being met? She thought the contractors were smart enough to read the print. She didn't know about lack of intention. Was it easier to ask for forgiveness than it was to ask permission? This was her concern. If they had no concern as a Board for the variances they were asking for, she had to trust the Board as to if they thought the applicants could meet the guidelines that were in the zoning rules. She had to trust that they would watch the applicants too, and obviously they have so far. She appreciated their work.

Joel N: He noted staff drafted a condition that required certified as-builts before the project was occupied. Once the project was built, supposedly before occupancy, the applicants give something stamped by a surveyor, engineer or an architect that says they built what they were supposed to.

Tom Cox: He was part of the Timbershor homeowners group. He asked if the May 3 drawing resembled the drawing that was submitted in Feb 2012.

Joel N: They were very close, but there were a couple of differences.

Tom C: There was a continual evolution then, in what was actually being built.

Joel N: He thought that was a close characterization.

Mike M: He asked if the changes done in February were in response to actions taken by the Planning Dept.

Joel N: The Planning Dept issued a cease and desist order because of the setback violation. When they corrected that violation by chopping off the corner of the building, Planning still didn't reinstate the permit because they needed the applicants to certify where they were at. That was when the impervious surface coverage discrepancy and the discrepancy with the plans were found.

Mike M: There was a discrepancy in the Feb plan or the May plan?

Joel N: The Feb plan was an as-built.

Mike M: That was staff's request.

Joel N: He affirmed.

Mike M: The new drawing was because of County action, when the County said they needed to know what the applicants had done. Evolution, maybe yes, but a correction based on staff actions was what the as-built represented.

Joel N: Now we know exactly what's built.

Sue L: She noted they had as-builts, and they had approved plans that this Board reviewed. Then there were some other plans that came into play somewhere along the line. She asked Andy S if he'd gone off of the May plans rather than the March plans.

Andy S: He'd seen both sets of plans. The new portion of the building got shifted to the north in the second plan. His understanding was they were 48 feet from the 50-foot setback on the south side, and the building was moved north a couple of feet to get out of the 50-foot south setback. That increased the footage of the building overall because it was hooked on to the old house. The other thing, that was probably completely his error, was the architect designed off of the north wall and they built off of the east wall, not thinking that the building was 1 ½ feet out of square. When they went off of that wall, it pushed the building farther to the east. Part of the problem in the corner, being [inaudible] in the setback, and it made a little bit more square footage.

Sue L: She checked that this explained why it disagreed with what those plans were, and the as-builts.

Andy S: It explained most of the disagreement. The bulk of the issue was because the building got moved to the north and then shifted east.

Janelle K: She checked that this was 360 square feet bigger than the original plans.

Joel N: That was what he calculated when he first received some as-builts. It was still in that ballpark, but he wasn't sure how precise 360 feet was now.

Janelle K: She noted that was a 9 x 40 change. It could've been little corners here and there, but that was what the differences were?

Joel N: It was little corners here and there, and there was the roof off the kitchen that was quite a bit larger. He thought Andy S could describe it better.

Andy S: It was between where the kitchen and the dining room were.

Joel N: That was something like 12 x 20 larger. That was the biggest difference.

Sue L: She checked that for impervious surface coverage, this was done with eaves, not walls. It wasn't necessarily living space that was increased. The eaves might be bigger.

Joel N: It could be the roof eave overhanging grass where the stormwater was directed.

Sue L: It wasn't necessarily living space.

Janelle K: Did a 10% increase represent a lot of extra stormwater runoff?

Joel N: They would have to deal with it in their stormwater plan.

Mike M: That was the reason the condition for updating the stormwater plans based on the new size of the home had to be accomplished. Things changed and they have to get an updated plan.

Joel N: He pointed out this Board had seen impervious surface coverage requests over 100%. This request was for 33%.

Jack Manning: He was a Timbershor homeowner of over 25 years. He resided elsewhere but spent a lot of time in this area in the summers. He presented his concerns from a written summary. (See attachments to minutes in the April 2012 meeting file for written document.) These included concerns about rule breaking and ethics. He highlighted that John Tabaracci pointed out a conditional use was required prior to work. This suggested to him that it shouldn't be after-the-fact. It set a bad precedent and didn't seem right to him. He noted that the Timbershor board hadn't approved plans.

Bill M: He didn't like the perception that the Board was being asked to rubber stamp something that was already an accomplished fact, regardless of what was supposed to have been done in the first place.

Public comment closed.

Mike invited Andy to complete his comments. Andy referred to a concern that came up about the septic system. The existing septic system, which was approved, had the drainfield on the beach. That had been taken out. There would be a new drainfield if they could get approval for one. For the time being, they were using a holding tank. He thought the degradation of the water in the lake would be much improved for people who swam there or used the water. This project was improving the quality of the water.

Paul asked Andy about the extra 360 square feet. It wasn't in one place? Andy replied that the bulk of it was from the discrepancy between the first plan and the second plan. Paul said that the stormwater plan was based on the first plan. There had been talk of when the stormwater system was addressed again for the extra square footage. If the 360 square feet weren't in one spot, wouldn't the whole field need to be addressed? Joel said the intent was to make sure it complied with the extra stormwater. Paul checked that the stormwater review would deal with as-built. Joel thought Dennis' concern was that they didn't have to go back to the drawing board, but they were just trying to address the change. Sue checked this would be the change from the previously approved submitted plans to the as-builts now. Joel didn't think the plans would be as-builts at this time. He recommended that the stormwater plan be revised before a permit was re-issued to deal with whatever was changed, with the intent that they not go design some other type of stormwater plan, but that they accommodate for the change. Mike checked that what Joel was asking to be revised was based on what would be the finished plan for the property.

Mike expressed his extreme annoyance with after the fact things for the Board. It happened too often. The Board was commissioned to make the best decision possible based on the facts that they had. They relied a lot on the Planning Dept and their judgment. Enforcement in the county was difficult with a small staff, and they did a great job. In this case, they issued a cease and desist, and went for the correction and following the right procedures once a violation occurred. It happened a lot. Sue agreed that unfortunately it did.

Tim commented that no one on the Board volunteered time to rubber stamp things. Planning staff were known for doing a very diligent job of work, as proved by the fact that they were here tonight. They were out there doing their job. He thought it was a poor perception that they rubber stamped stuff. They were bound by rules of what they could do and, for lack of a better term, the scope of work of what they looked at. For a special use permit, it was pretty narrow [inaudible]. Issues might come up that the Board didn't deal with for this. As far as precedent, this did happen a lot. There was precedent set that the Board did after the fact. He wanted to make it clear that the Board took this stuff very seriously. They hated after-the-fact items, but it was something that they dealt with. He thought there was a lot of integrity both from the Planning staff and this Board. Clarence said he disliked this after-the-fact stuff very much. It seemed that people came to MT from elsewhere and they thought there were no laws or regulations here, and they could do what they wanted. He thought that half or more than half of what the Board got was after-the-fact. They had to try to do what was best for everybody. As far as enforcing covenants, it had nothing to do with the Board. That was something you could take to court yourself. It was up to the homeowners to mitigate those kinds of things. The homeowners associations enforced those covenants themselves.

Tim added that in the grand scheme of things, this was a fairly small after-the-fact. Sometimes he looked at these as opportunities to make things better. This definitely had a better stormwater plan than many of the cabins built on this lake before any of this existed. This was an opportunity for them to make improvements and to make them meet code, so they don't pollute the water. He felt the Board improved things by making people hold to a higher set of standards. He said to ask a contractor about that. Clarence repeated that Andy Stark mentioned, they're moving septic systems and drainfields farther from the lake, making the lake better. It was an improvement of sorts. Septic systems were a big thing.

Sue referred to the discussion earlier. This wasn't necessarily a violation of the zoning. Any person in the zoning could come and ask for a conditional use to cover their property up to 49%. They had to come before the Board and it had to be researched and looked. It wasn't an unusual request. After-the-facts were always very irritating. Sometimes you could tell when they weren't really intentional. There were really blatant and not necessarily so blatant after-the-fact requests.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the conditional use with finding of fact and conditions as recommended by staff.

Tim asked if they needed to reject or do something with the late letter. Joel thought they should act on it and decide whether or not they recognized it as part of what they considered. Sue said she considered what was said about it and what one of the spokespersons for the applicant had mentioned. She didn't have time to read the entire document. Paul said most of it dealt with things the Board did not do. Mike reminded that the agent said the owners would be okay with disregarding this document as something to be considered on this vote.

Motion made by Mike Marchetti, & seconded by Tim McGinnis, that the document be set aside for purposes of evaluating this petition. Motion carried, all in favor.

Returning to the previous motion, Mike summarized that the Board did not use that late document as consideration for this vote. He checked with Sue, who made the original motion, whether she wanted to modify the motion or hold it as it was. She opted to hold the motion. Paul agreed, with regards to the 2nd to the motion, to approve the conditional use with findings of fact and conditions as recommended by staff: **Motion carried, all in favor.**

OTHER BUSINESS

None.

Mike Marchetti adjourned the meeting at 5:25 pm.